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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 STEVIE SMITH, H-15030,)
10 Plaintiff(s),) No. C 12-1112 CRB (PR)
11 vs.) ORDER OF DISMISSAL
12 ROBERT AYRIS, JR., et al.,) (Docket #2 & 4)
13 Defendant(s).)
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15 Plaintiff, a prisoner at Corcoran State Prison, has filed a pro se complaint
16 under 42 U.S.C. § 1983 attacking the validity of his state criminal conviction and
17 sentence. Among other things, he claims that he was unlawfully kidnaped and
18 set-up by various state officials. Plaintiff also seeks leave to proceed in forma
19 pauperis under 28 U.S.C. § 1915 (docket #2 & 4), which, based solely on his
20 affidavit of poverty, is GRANTED.

21 Plaintiff's action must be dismissed without prejudice because it is well-
22 established that any claim by a state prisoner that would necessarily imply the
23 invalidity of his conviction or continuing confinement, as plaintiff's claim would
24 here, must be brought in a habeas petition under 28 U.S.C. § 2254 after
25 exhausting state judicial remedies. See Nelson v. Campbell, 541 U.S. 637, 642-
26 44 (2004); see also Calderon v. Ashmus, 523 U.S. 740, 747 (1998) (claim by a
27 prisoner attacking the fact or duration of his confinement must be brought under
28 the habeas sections of Title 28 of the United States Code). And for essentially

1 the same reasons, a claim for damages based on unconstitutional conviction or
2 imprisonment would have to be dismissed without prejudice as well. See Heck v.
3 Humphrey, 512 U.S. 477, 486-487 (1994) (claim for damages for unlawful
4 incarceration or sentence not cognizable under § 1983 until conviction or
5 sentence at issue is invalidated).

6 For the foregoing reasons, the complaint is DISMISSED without prejudice
7 under the authority of 28 U.S.C. § 1915A(b).

8 The clerk shall enter judgment in accordance with this order, terminate all
9 pending motions as moot, and close the file.

10 SO ORDERED.

11 DATED: 04/17/2012



CHARLES R. BREYER
United States District Judge